IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1090 OF 1994.

Smt.Lila Vishnu Khare & ors. : Appellants.

versus

1. Pune Municipal Transport
2. Shri Eknath Bhaurao Kamble : Respondents.

Mr.R.S.Apte for the appellants.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 18th January 2005.

ORAL ORDER.

1. Heard advocate for the appellants. Nobody is present for the respondents. This appeal is filed by the legal heirs of original claimant for enhancement. Vishnu Ramchandra Khare was the original victim. He was passing by the road from Kesari Wada, i.e. by the left side of the road. At that time PMT bus bearing

No.MHQ-4830, driven by the opponent No.2 (here in this appeal Respondent No.2), came on wrong side and dashed against the applicant-victim. The applicant fell down and sustained injuries. He was removed to Dr.Kelkar Hospital where he was operated on 31st January 1982 and then discharged on 11th February 1982. According to the applicant the accident occurred because of rash and negligent driving of the driver of PMT bus and, therefore, a claim petition claiming Rs.50,000/- was filed by the applicant. The tribunal granted Rs.7,500/- only. Hence this appeal.

2. Counsel for the appellants pointed out that the victim Vishnu Khare, at the time of accident, was 77 years of age. He was sound in health and was running a business of catering contractor along with his son Govind (PW 1). He died during pendency of the application. His legal heirs i.e. the wife of the victim was brought on record along with others. So far as injuries are concerned, the appellants examined Dr.Kelkar of Kelkar Hospital who has stated that he examined Vishnu Ramchandra Khare and found that there was a fracture of femur and operation

was done for replacement of left ball from left hip joint and on 11.2.1982 he was discharged. The court awarded bear minimum compensation about Medical expanses Rs.5,500/-; investigation charges Rs.1,800/- Total Rs.7,300, Rounded upto Rs.7,500/-. Not a single farthing is awarded by the Court for the mental agony, pains and sufferings. The lower court did not consider the fact that if a man suffered in such an accident at the age of 77 years, it was bound to affect his self-dependency and he would have been required to confine to bed for a quite long time, his movements were bound to be affected because the female bone was fractured. Nothing was paid towards mental shock and sufferings, at least so far as wife of the victim is concerned. The counsel for the appellants submitted that Opponent No.1 i.e. the wife of the victim died during pendency of the appeal, but the other heirs are there on record. In these circumstances the claim for enhancement of compensation is required to be accepted. Though the applicant had claimed originally Rs.50,000/-, in my opinion, addition of Rs.18,000/- to make the total compensation of Rs.25,500/- would be sufficient. Even the Court has not granted any

interest. Hence the following order.

:ORDER:

. The appeal is partly allowed.

. The compensation awarded to the appellants is enhanced to Rs.25,000/- round figure and, they will be entitled for interest at the rate of 9% p.a. from the date of the claim till actual payment and, the costs of the appeal.

[D.G.DESHPANDE]

18/01/2005 JUDGE.